

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

MICHAEL J. BRODHEIM,

Plaintiff,

v.

MICHAEL CRY, et al.,

Defendants.

2:02-cv-0573 FCD KJN (PC)

**STIPULATION AND ORDER
TO CONTINUE HEARING
ON MOTION TO DISMISS**

Counsel for Plaintiff and Defendants stipulate to a continuance of the hearing on Defendants' Motion to Dismiss the Complaint currently scheduled for April 7, 2011, until May 19, 2011, at 10:00 a.m. Plaintiff has not yet filed an opposition and Defendants have not filed their reply. Thus, further briefing is anticipated.

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1 The continuance is requested due to Plaintiff's recent grant of a parole date by the
2 California Board of Prison Terms. However, after the parole hearing was held, the U. S. Supreme
3 Court issued its ruling in *Swarthout v. Cooke*, ___ U.S. ___, 131 S.Ct. 859 (2011), making it
4 unclear whether the grant of parole is still in effect. Additional time is necessary to determine
5 whether the District Court can, or will, order Plaintiff's release. Should Plaintiff be released on
6 parole, the parties agree that this matter may become moot, and no further briefing will likely be
7 necessary. Accordingly, the parties request a continuance of the hearing on Defendants' Motion
8 to Dismiss until May 19, 2011.

9 Dated: March 30, 2011

By: /s/ Kelli M. Hammond

10 KELLI M. HAMMOND
11 Deputy Attorney General
Attorney for Defendants

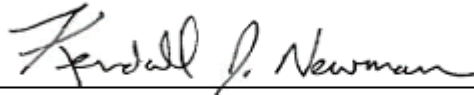
12 Dated: March 30, 2011

By: /s/ Joseph D. Elford

13 JOSEPH D. ELFORD
14 Attorney for Plaintiff

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16 **IT IS SO ORDERED.**

17 DATED: April 1, 2011

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19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE

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